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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,690	04/18/2000	ROLAND COX	JYG122USA	3166

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SPRING HOUSE CORPORATE CENTER
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SPRING HOUSE, PA 19477

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/529,690

Applicant(s)

COX, ROLAND

Examiner

Neil Levy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/2/04
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 16-18, 20, 31-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 16-18, 20, 31-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 33, 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are duplicative of claims 35 and 36, respectively.

Claims 38, 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

38 depends on its self – we presume 37 is intended.

Claims 13, 16-18, 20, 31-33, 35, 37 are rejected under 35 U.S.C. 102(a) as being anticipated by Cox et al – GB 2309461.

Cox et al showed the instant method steps, incorporating a fungicide as (p.2, top) claimed in a dope to produce an acrylic fiber (p.1. line 5-17), which maintains long lasting efficacy. The fungicide is at 0.001-10% (p.3, lines 11-14) of the acrylic polymer. In fact, Tolnaftate, at 0.1% (p. 6, top) was found effective. This is that of instant claim 44, thus, inherently it would be effective against *A. glaucus* and *A. restrict* as. Note the yarn spun from these fibers is ^{knitted} ~~limited~~ into fabric, and laundered in domestic machines (example 2). Note also, the products so made resist ironing (p.1, bottom) and are made into those items where mites can be found: textile articles generically, thus, the instant bedding and floor covering – tents; and upholstered materials, awnings (p. 4, lines 13-16).

Claims 13, 16-18, 20, 31-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox et al GB 2309461 in view of Leong et al 5156843 and Lebran et al EP 0047553.

Cox (above) provides the essence of the instant invention, but does not disclose fissured fibers. Leong does (summary) using porogens to form fissures during polymerization, to provide a means to maintain long-lasting efficacy of added actives, inclusive of anti fungal agents (col. 7, lines 38-4-8) and mildew and insect repellents, at 5% incorporated into bedding and upholstery (col. 7, lines 50-61). Polymeric fibers are of acrylics (col. 5, line 34-40, and Example).

Thus, the artisan would find it obvious to use particular ingredient combinations, concentration and ratios of ingredients, depending upon the particular fabric material use desired, of Cox, in order to provide an anti fungal product, modified by Leong to increase life expectancy, shown as motivation by Leong at col. 7. While Lebrum of record showed improved health with mite allergen reduction by adding anti fungal to textile-bedding material.

It has not clearly been established by objective showing of some additional unusual and/or unexpected results that the administration of the particular form of active, carrier of the particular form of fiber to be treated, provides any greater level of prior art expectation as claimed. Further, no criticality as to the size, shape or Anti fungal agent has been shown by applicant.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each

ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant's arguments filed on 4/18/04 have been fully considered but they are not persuasive. Applicant's arguments are seen as the instant invention is an improvement for allergy and asthma sufferers subjected to mite allergens. However, no limit, except @ claim 45, of cermount or concentration, and of anti fungal agent impregnated into fibers limited only to being man made, is claimed. Thus, the possibility of insufficiency of efficacy, and of irritant, allergic or toxicity effects of prolonged exposure to potentially harmful anti fungal counter the argued for benefits.

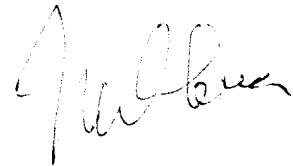
As to the art rejection, we find applicants arguments compelling, and so he consideration, with more relevant art, inventors in consort, primarily, is applied. We find the cited art suggests improvement and prolonged controlled release of anti fungal, over the original art cited, now used only to point to particular areas of concern associated with the use of bedding and textiles is general – mite potential problems finally the AMCOR material document is virtually unreadable as entered into the E-DAN system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/LR
May 3, 2004

NEIL S. LEVY
PRIMARY EXAMINER